

* IN THE "UNITED" STATES "DISTRICT" COURT *

* FOR THE "DISTRICT OF" DELAWARE *

CURRITS M. COTNOHNS

*

Case No. 105-739-SLR

P.O. M.T.

*

Jury trial required

v.

*

WARDEN RICK KEARNEY, ET AL. *

D.R.C.P.T.

"
PLAINTIFF'

ANSWERING "BRIEF"

CURRITS M. COTNOHNS

Smyrna, Delaware, D.R.C.P.T. of

Corporation Hill 81, Paddock Road

DATED:

Binding. # 21# C-U-BP

12-27-06

1991

THE UNITED STATES DISTRICT COURT

* FOR "THE" "DISTRICT" OF "DELAWARE" *

CHRIS M. COLLINS
PL

v.) CIV. NO. 05-739-SLR.

WARDEN RICK KEARNEY
DF ET AL

)

)

{ TABLE OF CONTENTS }

NATURE AND STAGE OF THE PROCEEDINGS P/4

SUMMARY OF THE ARGUMENT P/5

STATEMENT OF THE FACTS P/6

ARGUMENTS P/7

SICK CALL SERVICES

DEFENDANTS' ANSWER TO THE COMPLAINT

STATE 'DEFENDANTS' ANSWER TO THE AMENDED COMPLAINT

DEPOSITION QUESTION NANCY ZIBESCHINI

A DICTIONARY

OPENING BRIEF

IN THE UNITED STATES DISTRICT COURT

* FOR "THE "DISTRICT" OF "DELAWARE" *

CURTIS M. COLLINS
PL

v.) CIV. NO. 05-739-SLR.

WARDEN RICK KEARNEY
DF ET AL

)
)
)
)

TABLE OF CONTENTS

CASES, BRACKY v. GRENOLIER 494-E-ZD-566

Byrd v. Brasheke 466-E-ZD-6#

Collins v. Brown 268 F. Supp-198

Curtis v. Everett 489-F-ZD-516

DAVIDSON v. DEXON 386 F. Supp 482

Dole v. ARCO CHEMICAL CO. 921-F-ZD-181

HUDSON 112 S.CT-995

Lomper v. RENTOID-METAL CO. 372-F-ZD-246

LANDMAN v. Royster 354-F. Supp 1302

MONROE v. Pope 81-S.CT. 173#

MUSSKE v. PORTER 122 S.CT. 983

Popow v. Margaret 476-F. Supp 1237

WERTH v. Mcmann 460 F.ZD-126

CONSTITUTIONAL PROVISIONS

8th AMENDMENT / 14th Amendment

Summary Argument

3*

NUMBER 2# OFFICER BERZANSKY, AND OFFICER DABSY DID USE EXCESSIVE
FORCE ON MR. COLLENS, MR. COLLENS CAN PROVE THIS WHICH HAS WITNESSES
THAT WOULD TESTIFY TO IT TREAT
• • • • •

PAGE 3#

NUMBER 3# SGT. CHANDLER CAN BE HELD ACCOUNTABLE FOR HIS DISREGARDING
BECAUSE THAT MR. COLLENS CAME TO SGT. CHANDLER TO GET THE PROBLEMS
RESOLVE THAT MR. COLLENS WAS HAVING ^{PROBLEMS} WITH O/B BERZANSKY AND THIS SGT.
CHANDLER WASN'T DOING HIS JOB AS A SERGEANT VIOLATED THE
PERSONAL EIGHTH AMENDMENT

PAGE 3#

NUMBER 4# COLLENS WAS NOT TREATED FOR TWO FRACTURE RIBS
THE ONLY TIME THAT MR. COLLENS WAS SOME WHAT TREATED
FOR FRACTURE RIBS WAS ON 9-22-05 WHEN DOCTOR BURNS TOLD MR.
COLLENS ON THAT DATE 9-22-05 THAT HE HAD FRACTURE RIBS

* DEPARTMENT OF DELAWARE *

• NATURE AND STAGE OF THE PROCEEDING •

ON AUG 6, 05

THE PLAINTIFF CURTIS M. COLLINS HAD ENTERED THE MAIN CHOW HALL AT BREAKFAST TIME WHERE AT THE S.C.T. CENTER LOCATED IN GEORGETOWN, DEL., MR. COLLINS ASKED OTHERS INMATES ALREADY SEATED AT THE TABLE TO SHOVE DOWN SO HE COULD SET DOWN TO EAT, AT WHICH THE TIME C/O BEREZANSKY TOLD MR. COLLINS TO SHUT THE FUCK UP "AND THROW YOUR FUCKING FOOD TRAY AWAY", MR. COLLINS ASKED C/O BEREZANSKY WHY HE HAD TO THROW AWAY HIS FOOD TRAY & BEREZANSKY RESPONDED THERE WAS TANKEN ON THE CHOW HALL, MR. COLLINS WAS NOT HAVING A CONVERSATION WITH ANOTHER INMATE HE WAS JUST SIMPLY TRYING TO GET A PLACE TO SET SO HE COULD SET HIS FOOD, MR. COLLINS THEN USE THE CHAIN OF COMMAND RANK IN WHICH HE ASK SGT CHANDLER WHY THAT HE COULDN'T FRENCH HIS MEAL, SGT CHANDLER DIDN'T RESPONDED TO MR. COLLINS DUMP HIS FOOD TRAY, AS MR. COLLINS WAS DEPARTED FROM THE CHOW HALL C/O BEREZANSKY MADE A WISE COMMENT DIRECTED TO MR. COLLINS, WHEN MR. COLLINS TURNED AROUND TO HEAR WHAT C/O BEREZANSKY HAD TO SAY IN CASE HE WAS GIVE MR. ANOTHER DIRECT ORDER C/O BEREZANSKY CAME CHARGIN AT MR. COLLINS AND PUNCHED MR. COLLINS IN THE FACE IN THE CHOW HALL THAT HAND CUFFED MR. COLLINS THEN PEPPER SPRAY MR. COLLINS WITH TWO CANS THEN THE REST OF THE C/O STAFF SET ENROUTE AND MALTEOUSLY, ASSAULT MR. COLLINS, MEMBER FROM S.C.P. MEDICAL STAFF REFUSE TO LOOK AT MR. COLLINS CONJURER'S SHE TOLD MR. COLLINS TO STOP CRYING LIKE A LITTLE BITCH MR. COLLINS WENT 4TH DAYS WITHOUT RECEIVING PROPER

NATURAL PROCEDURES

P 44
P4

* DISTRICT COURT *

MEDICAL TREATMENT. SINCE THEN X-RAYS WERE TAKEN
OF MR COLLINS RIBS THAT DISPLAYED HIS RIBS
WAS SERIOUSLY FRACTURED. MR COLLINS WAS REFUSING
COPIES OF HIS MEDICAL REPORT BY THE DOCTOR AT
S.C.C CORRECTIONAL CENTER DAL.

SUMMARY OF THE FACTS

DENVER D.E.P.T. OF CORRECTION has a DIETITIAN who puts together a menu in which an inmate will RECEIVE ALL PROPER NUTRITIOUS, D.E.P.T. OF CORRECTIONAL COMMISSIONER (STANLEY THAYER) AND S.C.T. CORRECTIONAL INSTITUTION WARDEN RICK KEARNEY SUPPORTS THEIR CORRECTIONAL OFFICER TO MURKIN AN INMATE FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS UNDER CIVIL RIGHTS ACT BY PERMITTING THE CORRECTIONAL OFFICER TO ORDER AN INMATE TO DUMP THEIR FOOD TRAY AND NOT PROVIDING THE REQUIRED REQUIRED FOOD NUTRIENT DESIGN by the DIETITIAN

page 5#

~~SECRET OF THE FEDS~~

COTTONS DEPOSITION 13:18-11 CLAIM THAT I HAD A HISTORY OF DISCIPLINARY PROBLEMS WHEN IT CAME TO MEAL ON TWO OCCASIONS I DONT RECALL KNOW WHATS UP IN SMYRNA DOCK CHOW HALL PLEASE SHOW THE WRITING UP

DURING ONE MEAL AN OFFICER HAD DISMISSED THE CHOW HALL AND COTTONS CONTINUE TO SIT DOWN AND EAT AFTER BEING TOLD IT WAS TIME TO LEAVE COTTONS REPLIED FUCK YOU THAT IS A OUT RIGHT INABA FALSE "WHAT THE PERSON MAKING FALSE WRITING UPS ON ME NOW!"

REMEMBER THAT I HAD A WRITING UP ON MEDIUM SECURITY FROM SAMUEL, HASTINGS WROTE ME UP FOR DISRESPECTFULLY THREATENING BEHAVIOR BECAUSE HE LIKES TO TALK ABOUT PEOPLE MOTHER AND MY MOTHER HAD PASS AWAY A WHILE BACK AND I DONT HAVE NOBODY TO TALK ABOUT MY ^{MOM} SAMUEL, HASTINGS DONT EVEN KNOW MY MOTHER I GAVE A SYRUP TO ANOTHER INMATE IN THE CHOW HALL BECAUSE HE DID NOT HAVE ANY SO SAMUEL SAID MY MOTHER THREW AND THAT SO HE STATE FUCK YOU BUT DONT MAKE THE WAY MS THREW BUT NOT IN HIS HASTINGS SO PLEASE SEND THE ORGANIC WRITING UP,

page 6#

I WAS NOT TALKING TO SOMEONE AT ANOTHER TABLES I WAS SPEAKING TO SOMEONE AT THE SAME TABLES TO SLEEP DOWN SO THAT I CAN SAT DOWN TO EAT A MEAL AND I DO HAVE PROOF MY WITNESSE WILL TELL THE COURTS I JUST NOW FOUND OUT WHO I WAS TALKIN TO SLEEP DOWN HE IS ALSO hear IN SMYRNA RATE DANIEL, Smith ALSO claims that 66 Berezansky ASSAULTED HIM IN PRE-TRAIL AT S.C.T.

STATE OF THIS FACT

Page
74

COLLINS FOR INJURIES THE NURSE HELEN FOUND NO NOTED
INJURIES NO NOTED BRUISING SHE, DIDN'T EXAMINE ME
AT HOW IS NURSE going to see IF THERE WAS ANY
BRUISING IT WAS IN HANDCUFFS, AND SHE NEVER
WENT UP my t-shirt to check my Ribs out AND
BESIDES THAT THERE WAS KNOW BROKER WRIGHT IN A S.D.A.
HOLDING Room THATS WHERE SHE CAME TO SEE ME
A.S.D.A HOLDING Room, AND SHE STOOD BACK FROM ME ABOUT
TEN FEET AND SAID TO ME STOP CRYING HERE A LITTLE
bitch" THEN THE C.O.s TOOK ME TO A.S.D.A AND I HAVE
ANOTHER WITNESSES THAT WILL TESTIFY ON THE NURSE SO ALL
OF THAT move my finger freely AS A FALSE STATEMENT"

Page¹⁶

OFFICER Berezansky TOLD COLLINS
TO EITHER STOP TALKING OR THE chow hall or Camp has
TOMY THAT IS A OUT Right now AND I HAVE my
WITNESSES

Page¹⁶ THAT, COLLINS SUFFERED A FRACTURED RIBS PRIOR TO THE 8-8-05TH
INCIDENT AS A RESULT OF WORKING OUT THAT DIDNT TRANSPARE
HERE THAT, AND I NEVER HAD A HISTORY OF, SUICIDAL ATTEMPS
AND THE INJURY DID NOT COME FROM COLLINS DISORDERNLY
ACTION THE INJURY CAME FROM CORRECTIONAL OFFICER
PUNCHING AND KICKING MR. COLLINS

PAGE 18^F COMMONS DED KNOT HUNG TOWARDS G. BERZANSKY
WHY WOULD IT HUNG AT A HUGE PERSON THATS 6 FOOT 5"
AND WEIGHT AT 367 POUNDS OFFICER BERZANSKY
CHARGE AT MR COLLINS AND IT HAVE ABOUT 15TH WITNESSES
THAT IS WILLING TO TESTIFY

PAGE 18^H

Sgt CHANDLER, DED LAUGH AT MR. COLLINS I HAVE AKA
THE KITCHEN WORKER THAT WILL VERIFY THIS
COLLINS HAD NOT JUST BEEN CAPSTUNNED STUNNED
WAS IN HANDCUFFS FIRST THAN CAPSTUNNED, STUNNED
AND THEN ASSAULTED BY THE G.S MY HEAD WAS FACE DOWN
BUT IT CAN SEE JUST LITTLE, BIT FROM THE CORNER OF MY
EYES

PAGE 20^F 8-8-05 TWO DAYS AFTER THE INCIDENT COLLINS
RECEIVED AN X-RAY EXAMINATION OF HIS RIBS BY
DR. MAHENDRA PAROKH OF MID DELAWARE IMAGING ON
AUGUST 10-05 - ONLY FOUR DAYS AFTER THE INCIDENT
I DID NOT HAVE A EX-RAY, FOUR-DAYS AFTER THE INCIDENT
I WAS SCHEDULE FOR A EX-RAY FOUR DAYS AFTER
THE INCIDENT I HAD MY EX-RAYS DONE ON 8-17-05
ELEVEN DAYS AFTER THE INCIDENT WHAT S.C.L.
IS TEMPERING WITH THE EX-RAYS" DATES NOW!

PLEASE LOOK AT THE PHYSICIAN ORDER IN THE PLAINTIFF
APPENDIX YOU WILL SEE THE PLAINTIFF EX-DONE ON
-8-17-05

~~STATE OF FACTS~~

Page 18⁴

CORRENS DID NOT HUNG TOWARDS % BERZANSKY

WHY WOULD IT HUNG A HUGE 363 POUNDS MAN.

CORRENS ALSO HAVE ALL THE KITCHEN WORKERS

THAT WERE ATTACKED WHEN % BERZANSKY CHARGED AT MR COLLINS

AND PUNCHED MR CORRENS IN THE FACE "MR COLLINS

HAVE ALL THE KITCHEN WORKERS AND SOME OF THE
INMATES WITH TESTIFY IN COURT "BOBBY PRICE"

DONNELL DAVIS, INMATES THAT WAS WORKING IN THE
S.C.R. CHOW HALL AT THE TIME OF THE BRUTAL

ASSAULT TOOK PLACE

CERTIFICATE OF SERVICE

✓ CURTIS COLLINS hereby CERTIFY
THAT ON 12-21-06

✓ CAUSED A TRUE AND CORRECT COPY OF THE
ANSWERING BRACE ATTACHED WAS
HANDED TO A D.E.C. COKE, CENTER
TO PLACE IN A D.E.C. US MAILING SYSTEM
TO FORWARD TO:

Clerk

D.E.C.T. COURSE
ERIKA Y. TROSS
Deputy Attorney General
D.E.P.T. of JUSTICE,
CAROL STATE B.L.D.J.
820 N.
Rt. French Wilm, Del
19801

UNITED STATES DISTRICT COURT
OF
DELAWARE ROCK, BOX 18 #
844 N King St Wilm, Del
19801-3578

Respectfully
CURTIS COLLINS
D.E.C. / COKE, CENTER
Smyrna Del, 1181 Paddock Road

(1)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CURTIS M. COLLINS,)
)
Plaintiff,)
) C.A. No. 05-739-SLR
v.)
)
WARDEN RICK KEARNEY,)
SGT. JAMES CHANDLER, and
C/O BEREZINSKY,)
)
Defendants.)

DEFENDANTS' ANSWER TO THE COMPLAINT

COMES NOW, the Defendants Warden Rick Kearney, Sgt. James Chandler, and Officer Bradley Berezansky (the "Defendants"), by and through their undersigned counsel, and hereby respond to the Complaint of Plaintiff Curtis M. Collins ("Collins" or "Plaintiff"), dated October 18, 2005 and filed October 21, 2005 (D.I. 2) (the "Complaint"). The Complaint is not formatted in paragraphs nor is it numbered. Therefore Defendants respond to the Complaint by sentence as follows:

STATEMENT OF CLAIM AND ADDENDUM

Sentence No. 1: The allegations of Sentence No. 1 of the Complaint that begin with, "Warden this person knows" are denied.

Sentence No. 2: The allegations of Sentence No. 2 of the Complaint that begin with, "C/O Berezinsky punched" are denied.

Sentence No. 3: The allegations of Sentence No. 3 of the Complaint that begin with, "Now comes the above" are denied.

Sentence No. 4: Defendants admit that Plaintiff was talking during

breakfast. Defendants deny each and every allegation of Sentence No. 4 of the Complaint not specifically admitted herein.

Sentence No. 5: The allegations of Sentence No. 5 of the Complaint that begin with, "Where as officer (Berezinksy)" are denied.

Sentence No. 6: The allegations of Sentence No. 6 of the Complaint that begin with "The plaintiff asked officer" are denied.

Sentence No. 7: The allegations of Sentence No. 7 of the Complaint that begin with "Now the Plaintiff understands" are admitted.

Sentence No. 8: The allegations of Sentence No. 8 of the Complaint that begin with "However if officer" are denied.

Sentence No. 9: The allegations of Sentence No. 9 of the Complaint that begin with, "Therefore officer wrongly" are denied.

Sentence No. 10: Defendants admit that Plaintiff was ordered to dump his tray. By way of further response to the allegations of Sentence No. 10 of the Complaint, Defendants state that Plaintiff was ordered to dump his tray as a result of disobeying a direct order. Defendants deny each and every allegation of Sentence No. 10 not specifically admitted herein.

Sentence No. 11: ~~✓~~ The allegations of Sentence No. 11 of the Complaint that begin with, "So plaintiff obeyed" are denied.

Sentence No. 12: ~~✓~~ The allegations of Sentence No. 12 of the Complaint that begin with, "Then plaintiff approaches" are denied.

Sentence No. 13: ~~✓~~ The allegations of Sentence No. 13 of the Complaint that begin with, "So Sergeant Chandler" are denied.

Sentence No. 14: The allegations of Sentence No. 14 of the Complaint that begin with, "As plaintiff was speaking" are denied. ~~LAW~~ ✓

Sentence No. 15: The allegations of Sentence No. 15 of the Complaint that begin with, "So as plaintiff was leaving" are denied.

Sentence No. 16: Defendants admit that Plaintiff turned around to face Officer Berezansky. Defendants deny each and every allegation of Sentence No. 16 of the Complaint not specifically admitted herein.

Sentence No. 17: The allegations of Sentence No. 17 of the Complaint that begin with "He came running" are denied.

Sentence No. 18: The allegations of Sentence No. 18 of the Complaint that begin with "As plaintiff stood still" are denied.

Sentence No. 19: The allegations of Sentence No. 19 of the Complaint that begin with "And to the best of my knowledge" are denied.

Sentence No. 20: The allegations of Sentence No. 20 of the Complaint that begin with "Then they slammed" are denied.

Sentence No. 21: Defendants admit that Plaintiff was sprayed with Capstun. Defendants deny each and every allegation of Sentence No. 21 of the Complaint not specifically admitted herein.

Sentence No. 22: Defendants admit that Plaintiff was placed in an ASDA cell. Defendants deny each and every allegation of Sentence No. 22 of the Complaint not specifically admitted herein.

Sentence No. 23: The allegations of Sentence No. 23 of the Complaint that begin with, "After complaining" are denied.

Sentence No. 24: The allegations of Sentence No. 24 of the Complaint that begin with, "She said nothing" are denied.

Sentence No. 25: Defendants admit that Plaintiff was placed in ASDA 1. Defendants deny each and every allegation of Sentence No. 25 of the Complaint not specifically admitted herein.

Sentence No. 26: The allegations of Sentence No. 26 of the Complaint that begin with, "And plaintiff went approximately" are denied.

Sentence No. 27: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Sentence No. 27 of the Complaint that upon receiving medical attention Plaintiff had x-rays taken, and therefore deny same.

Sentence No. 28: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Sentence No. 28 of the Complaint that x-rays indicated Plaintiff had fractured ribs and that Plaintiff has several witnesses, and therefore deny same.

Sentence No. 29: The allegations of Sentence No. 29 of the Complaint that begin with, "The plaintiff filed many" are denied.

Sentence No. 30: The allegations of Sentence No. 30 of the Complaint that begin with, "Therefore there is no" are denied.

Sentence Nos. 31 - 35: The allegations of Sentence Nos. 31 through 35 of the Complaint that begin with "The plaintiff has received" discuss remedies Plaintiff believes he is entitled to receive. Because these sentences do not contain any allegations or statements of claim no response by the Defendants is required. To the

extent a response is required Defendants deny the allegations of Sentence Nos. 31 through 35 and deny that Plaintiff is entitled to any relief.

Sentence No. 36: The allegations of Sentence No. 36 of the Complaint that begin with, "Not only has the Plaintiff" are denied.

Sentence Nos. 37 - 39: The allegations of Sentence Nos. 37 through 39 of the Complaint that begin with "The plaintiff's pain from the above" state legal conclusions to which no response is required.

RELIEF

Defendants deny that Plaintiff is entitled to any relief.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The Complaint fails to state claims upon which relief may be granted.
2. The action and all claims are barred by Eleventh Amendment immunity.
3. As to any claims against the State or against Defendants in their official capacities, Defendants and the State are protected from liability by the doctrine of sovereign immunity.
4. The Defendants are entitled to qualified immunity.
5. As to any claims under state law, the Defendants are entitled to immunity under the State Tort Claims Act, 10 Del. C. §4001 *et seq.*
6. To the extent the Plaintiff seeks to hold Defendants liable based on supervisory responsibilities, the Doctrine of Respondeat Superior or vicarious liability is not a basis for liability in an action under 42 U.S.C. § 1983.

7. Defendants, in their official capacities, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 U.S.C. § 1983.

8. This action and all claims are barred by the applicable statute of limitations.

9. Plaintiff has failed to exhaust his administrative remedies.

10. Defendants cannot be held liable in the absence of personal involvement for alleged constitutional deprivations.

11. The Plaintiff's claims are barred by his contributory negligence.

12. Insufficiency of service of process.

13. Insufficiency of process.

14. Lack of jurisdiction over the person and subject matter.

WHEREFORE, Defendants respectfully request the Court grant judgment in their favor and against the Plaintiff in all respects, and enter an Order (i) dismissing the Complaint in its entirety as to the Defendants; (ii) awarding Defendants their fees and costs; and (iii) granting such other and further relief as is just and proper.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Erika Y. Tross

Erika Y. Tross (#4506)
Deputy Attorney General
820 N. French Street
Wilmington, DE 19801
(302) 577-8400

Attorney for the Defendants

Dated: March 20, 2006

CERTIFICATE OF SERVICE

I, Erika Y. Tross, Esq., hereby certify that on March 20, 2006, I caused a true and correct copy of the attached *Defendants' Answer To The Complaint* to be served on the following individual in the form and manner indicated:

NAME AND ADDRESS OF RECIPIENT:

Inmate Curtis M. Collins
SBI #00314128
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

MANNER OF DELIVERY:

One true copy by facsimile transmission to each recipient
 Two true copies by first class mail, postage prepaid, to each recipient
 Two true copies by Federal Express
 Two true copies by hand delivery to each recipient

/s/ Erika Y. Tross

Erika Y. Tross (#4506)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
302-577-8400

Answers to Complaints

1:05-cv-00739-SLR Collins v. Kearney et al

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from Tross, Erika Yvonne entered on 3/20/2006 at 12:33 PM EST and filed on 3/20/2006

Case Name: Collins v. Kearney et al

Case Number: 1:05-cv-739

Filer:
Rick Kearney
James Chandler
Berezinsky

Document Number: 18

Docket Text:

ANSWER to Complaint by Rick Kearney, James Chandler, Berezinsky.(Tross, Erika)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1079733196 [Date=3/20/2006] [FileNumber=186782-0]
[135bf1034d6c854945a69c515e7a84dd16cdec2c5c0233669e6f5f618af5997b3268
afee16e273dd667fb9d2bf1585cff87f70f74a0b7a1b24db165d720b5033]]

1:05-cv-739 Notice will be electronically mailed to:

Erika Yvonne Tross Erika.Tross@state.de.us

1:05-cv-739 Notice will be delivered by other means to:

Curtis M. Collins
SBI #314128
Delaware Correctional Center
SHU 17-DL-2
1181 Paddock Road
Smyrna, DE 19977

(2)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CURTIS M. COLLINS,)
)
)
Plaintiff,) C.A. No. 05-739-SLR
)
v.) Jury Trial Requested
)
WARDEN RICK KEARNEY, et al.,)
)
)
Defendants.)

STATE DEFENDANTS' ANSWER TO THE AMENDED COMPLAINT

COMES NOW, State Defendants Warden Rick Kearney, Sergeant James Chandler, Officer Bradley Berezansky, Officer Michael Milligan, Officer Jeffrey Daisey, and Officer Irvin Johnson (the "State Defendants"), by and through their undersigned counsel, and hereby respond to the Amended Complaint of Plaintiff Curtis M. Collins ("Collins" or "Plaintiff"), dated March 29, 2006 and filed May 12, 2006 (D.I. 20) (the "Amended Complaint"). The Amended Complaint is not formatted in paragraphs. Therefore, State Defendants respond to the Amended Complaint by sections as follows:

Jurisdiction

The allegations of the "Jurisdiction" section of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required State Defendants specifically deny any wrongdoing.

Previous Lawsuits

State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in the "Previous Lawsuits" section of the Amended Complaint and, therefore, deny same.

Exhaustion Pursuant to PLRA

The allegations of the "Exhaustion Pursuant to PLRA" section of the Amended Complaint are denied.

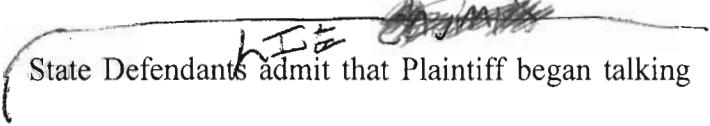
Statement of Claim

Sentence No. 1: The allegations of Sentence No. 1 of the "Statement of Claim" section of the Amended Complaint that begin with, "On 8-6-2005" are admitted.

Sentence No. 2: State Defendants admit that Plaintiff was talking in the chow hall during breakfast. State Defendants deny each and every allegation of Sentence No. 2 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 3: State Defendants admit that Plaintiff was ordered to dump his tray. By way of further response to the allegations of Sentence No. 3 of the "Statement of Claim" section of the Amended Complaint, State Defendants state that Plaintiff was ordered to dump his tray as a result of disobeying a direct order. State Defendants deny each and every allegation of Sentence No. 3 not specifically admitted herein.

Sentence No. 4: State Defendants admit that Plaintiff was told that there is no talking in the chow hall. State Defendants deny each and every allegation of Sentence No. 4 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 5:  State Defendants ^{WIE} admit that Plaintiff began talking to Sergeant Chandler after he was given a direct order to dump his tray. State Defendants

deny each and every allegation of Sentence No. 5 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 6: The allegations of Sentence No. 6 of the "Statement of Claim" section of the Amended Complaint that begin with the words "Sgt. Chandler did not," are denied. ✓

Sentence No. 7: The allegations of Sentence No. 7 of the "Statement of Claim" section of the Amended Complaint that begin with the words "As Curtis was leaving," are denied.

Sentence No. 8: State Defendants admit that Plaintiff turned around to face Officer Berezansky. State Defendants deny each and every allegation of Sentence No. 8 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 9: The allegations of Sentence No. 9 of the "Statement of Claim" section of the Amended Complaint that begin with the words "C/Os (Milligan), (Daisey) and (Irvin Johnson)," are denied. By way of further response, State Defendants state that Officer Milligan was not working at Sussex Correctional Institute on August 6, 2005. State Defendants further state that Officer Johnson was not working in the chow hall during breakfast on August 6, 2005.

Sentence No. 10: The allegations of Sentence No. 10 of the "Statement of Claim" section of the Amended Complaint that begin with the words "Then they sprayed," are denied. ✓

Sentence No. 11: State Defendants admit that Plaintiff was placed in an ASDA cell. State Defendants deny each and every allegation of Sentence No. 11 of

the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 12: State Defendants admit that Plaintiff was examined by a nurse on August 6, 2005. State Defendants deny each and every allegation of Sentence No. 12 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 13: The allegations of Sentence No. 13 of the "Statement of Claim" section of the Amended Complaint that begin with the words "She did no examination," are denied.

Sentence No. 14: State Defendants admit that Plaintiff was placed in ASDA 1. State Defendants deny each and every allegation of Sentence No. 14 of the "Statement of Claim" section of the Amended Complaint not specifically admitted herein.

Sentence No. 15: State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Sentence No. 15 of the "Statement of Claim" section of the Amended Complaint that Plaintiff had x-rays taken which indicated his ribs were fractured, and therefore, deny same.

Sentence No. 16: State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations asserted in Sentence No. 16 of the "Statement of Claim" section of the Amended Complaint that Plaintiff requested a copy of his x-rays and was told he could not have a copy, and therefore, deny same.

Relief Requested

State Defendants deny that Plaintiff is entitled to any relief.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The Amended Complaint fails to state claims upon which relief may be granted.

2. The action and all claims are barred by Eleventh Amendment immunity.

3. As to any claims against the State or against State Defendants in their official capacities, State Defendants and the State are protected from liability by the doctrine of sovereign immunity.

4. Officials and employees of the State of Delaware acting in good faith within the scope of their employment and without knowingly violating well established federal rights, are entitled to qualified immunity and cannot be held liable in this action.

5. State Defendants, in their official capacities, are not liable for alleged violations of Plaintiff's constitutional rights as they are not "persons" within the meaning of 42 U.S.C. § 1983.

6. As to any claims sounding in state law, the State Defendants are immune from liability under the State Tort Claims Act, 10 Del. C. §4001, *et seq.*

7. To the extent the Plaintiff seeks to hold State Defendants liable based on supervisory responsibilities, the Doctrine of Respondeat Superior or vicarious liability is not a basis for liability in an action under 42 U.S.C. § 1983.

8. This action and all claims are barred, in whole or in part, by the

applicable statute of limitations or any other statutorily required administrative time requirement.

9. Plaintiff has failed to exhaust his administrative remedies, including but not limited to, remedies pursuant to 42 U.S.C. § 1997a(e).

10. State Defendants cannot be held liable in the absence of personal involvement for alleged constitutional deprivations.

11. The Plaintiff's claims are barred by his contributory negligence.

12. To the extent Plaintiff's claims sound in negligence, Plaintiff cannot state a cause of action under 42 U.S.C. § 1983.

13. Plaintiff fails to state a claim against State Defendants for failure to train or for maintenance of wrongful customs, practices and policies.

14. Plaintiff fails to state a claim against State Defendants for violation of the Eighth Amendment.

15. Plaintiff's injuries were caused, in whole or in part, and/or exacerbated by a pre-existing condition which existed prior to the date of any alleged wrongful conduct by the State Defendants.

16. Plaintiff's injuries and damages, if any, resulted from an intervening and superseding cause.

17. Plaintiff's own conduct proximately caused and/or exacerbated his injuries, if any.

18. Insufficiency of service of process.

19. Insufficiency of process.

20. Lack of jurisdiction over the person and subject matter.

WHEREFORE, State Defendants respectfully request the Court grant judgment in their favor and against the Plaintiff in all respects, and enter an Order (i) dismissing the Complaint in its entirety as to the State Defendants; (ii) awarding State Defendants their fees and costs; and (iii) granting such other and further relief as is just and proper.

**DEPARTMENT OF JUSTICE
STATE OF DELAWARE**

/s/ Erika Y. Tross _____

Erika Y. Tross (#4506)
Deputy Attorney General
820 N. French Street
Wilmington, DE 19801
(302) 577-8400
Attorney for the State Defendants

Dated: October 31, 2006

CERTIFICATE OF SERVICE

I, Erika Y. Tross, Esq., hereby certify that on October 31, 2006, I caused a true and correct copy of the attached *State Defendants' Answer To The Amended Complaint* to be served on the following individual in the form and manner indicated:

NAME AND ADDRESS OF RECIPIENT:

Inmate Curtis M. Collins
SBI #00314128
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

MANNER OF DELIVERY:

- One true copy by facsimile transmission to each recipient
- Two true copies by first class mail, postage prepaid, to each recipient
- Two true copies by Federal Express
- Two true copies by hand delivery to each recipient

/s/ Erika Y. Tross

Erika Y. Tross (#4506)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
302-577-8400

66

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CURTIS M. COLLINS,)
)
Plaintiff,)
)
v.) Civ. No. 05-739-SLR
)
WARDEN RICK KEARNEY, et al.,)
)
Defendants.)

CERTIFICATION

At Wilmington this 9th day of November, 2006;
I, Nancy Rebeschini, Esquire, pro se law clerk, and
designated officer for depositions upon written questions held
before me on November 2, 2006, do here by certify that:

1. The deposition of James Chandler was held on November 2,
2006, at 1:30 p.m., at the J. Caleb Boggs Federal Building,
Wilmington, Delaware.

2. On that same date, James Chandler declared before me, an
individual authorized to administer oaths, that his written
answers were true and correct.

3. I read aloud each and every deposition question
submitted by plaintiff, Curtis M. Collins, for deponent, James
Chandler.

4. I personally observed deponent, James Chandler, answer
in writing, the deposition questions.

5. A true and correct copy of the written questions filed
by plaintiff, the original written answers of deponent, and

written original objections made by his counsel are attached hereto and are filed with the court, and copies shall be served upon the parties and the deponents.

I, Nancy Rebeschini, certify under penalty of perjury that the foregoing is true and correct.

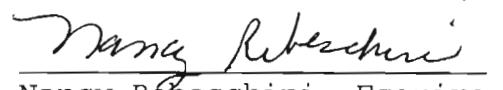
Executed this 9th day of November, 2006.

Nancy Rebeschini

Nancy Rebeschini, Esquire,
Designated Officer

CERTIFICATE OF SERVICE

I hereby certify that on November 9 , 2006, I caused to be electronically filed the attached Certification with the Clerk of the Court using CM/ECF, which will send notification of such filing to Erika Yvonne Tross, Esquire, counsel for defendants. I further certify I caused a true and correct copy of the attached Certification to be served via U.S. mail on plaintiff, Curtis M. Collins, SBI #314128, Delaware Correctional Center, SHU 17-DL-2, 1181 Paddock Road, Smyrna, DE 19977.


Nancy Rebeschini
Nancy Rebeschini, Esquire,
Designated Officer

Sgt

Sgt. CHANDLER

THE PLAINTIFF SEEN YOU WHILE HE WAS
① ~~#~~ LAYING ON THE GROUND, AND I NOTICED
THAT YOU WAS STANDING THERE LAUGHING YOU
HEAD OFF AT THE SITUATION INSTEAD OF
STOPPING UNFAIR TREATMENT TOWARDS A
INMATE WHY THEN DINNT YOU "Sgt" PUT A
STOP TO WAS HAPPENING?

Sgt.

#② HAVE YOU EVER SEEN OR HEARD A FELLOW
OFFICERS RASH OUT AT A INMATE BECAUSE
OF FAMILY PROBLEMS?

#③ ~~F~~ Sgt. IS IT TRUE WHEN PLAINTIFF COLLINS
CAME TO YOU ABOUT A UNPROFESSIONAL
OFFICER'S BERZANSKY BEING OUT OF
CONTROL?

Sgt.

#④ IS IT TRUE THAT OFFICER BERZANSKY
RAN TOWARDS THE PLAINTIFF IN THE
"CHOWHALL" AND ASSAULTED THE PLAINTIFF
BY PUNCHING THE PLAINTIFF IN THE FACE
FOR NO REASON AT ALL?

Sgt.

Sgt. CHANDLER

#(5) IS IT THE TRUTH "WHEN AN INMATE "GET SERIOUSLY" HURT, THEY MUST IMMEDIATELY BE TAKEN TO MEDICAL IN ANY EMERGENCY SITUATION?

#(6) WHY THEN DIDN'T YOU SEE THAT THE PLAINTIFF GOT PROPER MEDICAL TREATMENT?

#(7) # SGT IS IT TRUE YOU HAVE A PERSONAL VENDETTA AGAINST THE PLAINTIFF? OR YOU JUST DON'T CARE ABOUT THE WELL BEING OF INMATES?

#(8) # SGT ALSO IS THE TRUTH THAT "S.C.I." IS A REAL RECAIR PRISON?

#(9) OK FOR THE RECORD WITH ALL THESE SERIOUS QUESTIONS THAT WAS ASKED HERE TODAY WOULD YOU BE WILLIN TO TAKE A BIG HIR DETECTOR TEST?

#(10) IS IT TRUE THAT ANY OFFICER WITH A HIGH RANK IS TO TAKE CHARGE WITHOUT ANY OFFICER WITH NO RANK YOU WERE THE ONLY HIGH RANK IN THE CHOWHALL WHY YOU DIDN'T YOU TAKE CHARGE OF THE SITUATION?

① It was impossible for the inmate do see me due to the fact that he was face down. Also Captain had been used on him and this greater impairs the vision. As to the question whether or not I was laughing is untrue is incorrect. By the time I got to the back of the chow hall the FM (Curtis Collins) had already be sprayed and hand cuffed at that time.

② I don't discuss officer family problems with them so I would not know.

③ No

④ Inmate Collins was removed from his chow hall due to his trying to incite others to a riot. The Collins was given a direct order by myself to exit the chow hall which he failed to do.

⑤ Yes

⑥ He was taken to medical by the officer involved, Cleared and placed in a holding cell.

⑦ No

(8) No

(9) No

(10) Because with three other officers involved in the situation, I was the only one left to watch the other 80 or so high security inmates that were still in the Chowhalla at that time.

11-2-06


James R. Chandler

Deposition of Sgt. Chandler

11/2/06

1. No objection
2. Objection - irrelevant
3. Objection - unintelligible
4. Objection - compound question
5. No objection
6. Objection to form
7. Objection compound
8. Objection unintelligible
9. Objection
10. Objection unintelligible

Erika Y. Ross #4506

Date: 11/2/06

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CURTIS M. COLLINS,)
)
Plaintiff,)
)
v.) Civ. No. 05-739-SLR
)
WARDEN RICK KEARNEY, et al.,)
)
Defendants.)

CERTIFICATION

At Wilmington this 6th day of November, 2006;
I, Nancy Rebeschini, Esquire, pro se law clerk, and
designated officer for depositions upon written questions held
before me on November 8, 2006, do here by certify that:

1. The deposition of Bradley Berezansky was held on
November 8, 2006, at 9:30 a.m., at the J. Caleb Boggs Federal
Building, Wilmington, Delaware.

2. On that same date, Bradley Berezansky declared before
me, an individual authorized to administer oaths, that his
written answers were true and correct.

3. I read aloud each and every deposition question
submitted by plaintiff, Curtis M. Collins, for deponent, Bradley
Berezansky.

4. I personally observed deponent, Bradley Berezansky,
answer in writing, the deposition questions.

5. A true and correct copy of the written questions filed
by plaintiff, the original written answers of deponent, and

written original objections made by his counsel are attached hereto and are filed with the court, and copies shall be served upon the parties and the deponents.

I, Nancy Rebeschini, certify under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of November, 2006.

Nancy Rebeschini
Nancy Rebeschini, Esquire,
Designated Officer

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2006, I caused to be electronically filed the attached Certification with the Clerk of the Court using CM/ECF, which will send notification of such filing to Erika Yvonne Tross, Esquire, counsel for defendants. I further certify I caused a true and correct copy of the attached Certification to be served via U.S. mail on plaintiff, Curtis M. Collins, SBI #314128, Delaware Correctional Center, SHU 17-DL-2, 1181 Paddock Road, Smyrna, DE 19977.

Nancy Rebeschini
Nancy Rebeschini, Esquire,
Designated Officer

C/o Berezansky

1*

IS IT TRUE THAT YOU HAVE A "HISTORY" OF
CAPTURING INMATES before AND
AFTER THEY ARE "HANDCUFFED AT S.C.I. PRISON

#2

IS IT TRUE THAT 90% OF YOUR DISCIPLINARY
REPORTS ON INMATES ACCUSE "AT CHOW TIME"
PENALTY THE INMATES AT S.C.I. PRISON

#3

WORKING AS A CORRECTIONAL OFFICER FOR
THE STATE OF DELAWARE have you EVER
BEEN PLACED OR LEFT PENTALTY ANY
INVESTIGATION CONCERNING ABUSE IN INMATE
AT S.C.I. PRISON.

#4

WORKING AS A CORRECTIONAL OFFICER FOR THE
STATE OF "DELAWARE" have you BEEN SUED
BY AN "INMATE" AT S.C.I. ACCUSING YOU OF
ABUSE OR THREATENING BEHAVIOR, IF SO
could you PLEASE STATE FOR THE RECORD how many
MEAN TIMES YOU BEEN SUED OR ACCUSED
OF INMATES ABUSE OR ANY OTHER THREATENING
BEHAVIOR'S BY INMATES HOUSED AT S.C.I. PRISON.

5*

IS IT TRUE THAT 82% PERCENT OF YOU
DISCIPLINARY REPORT'S FILED ON INMATES
ARE AFRICAN AMERICAN INMATES AT
S.C.I. PRISON

6# 40 BEREZANSKY

IS IT TRUE THAT OUT OF 90% PERCENT
OF YOUR INT' COUNTER ARE "WITH" AFRICAN
AMERICAN "INMATES" RESOLVES IN THEM
BEING ASSAULTED" By you CAPSTUN: by you
BEFORE AND AFTER" THE INMATES ARE ALREADY
IN HANDCUFFS.

7# Sir

CANT YOU PLEASE TELL THE COURTS WHY YOU
AT RAN MR. COLLINS IN THE CHOW HALL AND
ASSAULTED MR. COLLINS BY PUNCHIN MR. COLLINS
IN THE FACE IN FRONT OF A BUNCH OF OTHER
INMATES IN THE S.C.I. CHOW HALL

8 AS IT TRUE THAT your JOB IS TO BE A
PROFESSIONAL OFFICER'S

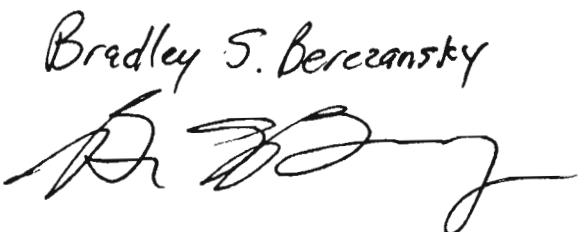
9 WELL CANT YOU PLEASE TELL THE COURTS
why YOU USED PROFANITY ALL THE TIMES
WHEN TAKIN TO INMATES

10# HAVE YOU EVER BEEN ASSAULTED OR ABUSED
IN THE PAST by AN' AFRICAN AMERICAN
MALE" WHILE you were OUT OF UNIFORM
OR IN UNIFORM.

c/o Bradley Bereznansky

11/08/06

- 1) No
- 2) No
- 3) No
- 4) Yes, once
- 5) I don't know! I don't keep track.
- 6) NO
- 7) I was approached by you not the other way around.
You lunged at me and were restrained and taken
to the ground and cuffed.
- 8) Yes
- 9) I don't use profanity all the time(s) while talking to
inmates.
- 10) No

Bradley S. Bereznansky


Deposition of Bradley Berezansky

11/8/06

Objections:

1. Objection - Irrelevant
2. Objection - Irrelevant
3. No objection
4. Objection - Compound - Irrelevant
5. Objection - Irrelevant
6. Objection - Form
7. No objection
8. No objection
9. Objection - Form
10. Objection - Irrelevant

Erika Y. Tros (#4506)

Erika Y. Tros

Disciplinary#
4989

SCI Sussex Correctional Institution
PO Box 500
GEORGETOWN DE, 19947
Phone No. 302-856-5280

Date: 06/19/2005

DISCIPLINARY REPORT

Disciplinary Type: Class1

Housing Unit: MULTI-SECURITY

IR#: 10557

SBI#	Inmate Name	Inst. Name	Location Of Incident	Date	Time
00314128	Collins, Curtis M	SCI	MEDIUM	06/17/2005	06:00

Violations: 1.05/200.225 [REDACTED] (REDACTED), 1.06/200.203 Disorderly or Threatening Behavior

Witnesses: 1. Hall, Shcan

2. N/A

3. N/A

Description of Alleged Violation(s)

I/M Collins Became Disorderly During Chow And Stated Fuck You . You Better Not Put Your Hands On Me In A Threatening Manner.Trying To Get Other Inmates Involved Or Come To His Aide. While On The Tier. He Again Stated' Fuck You And You Better Not Put Your Hands On Me As If Trying To Provoke Others To Become Involved.

Reporting Officer: Hastings, Samuel (CO Corporal/Sgt. - Large Inst.)

Immediate Action Taken

Immediate action taken by: Hastings, Samuel -CO Corporal/Sgt. - Large Inst.

N/A

Offender Disposition Details

Disposition: N/A

Date: N/A

Time: N/A

Cell Secured? No

Reason: N/A

Disposition Of Evidence: N/A

Approval InformationApproved: Disapproved:

Approved By: Truitt, George C (Shift Commander - Large Inst.)

Comments: N/A

Shift Supervisor Details

Date Received:

Time:

Received From: _____

Shift Supervisor Determination:

- Upon reviewing this Disciplinary Report, I conclude that the offense may be properly responded to by an immediate revocation of the following privileges(see reverse side) for _____ hours not to exceed 24 hours)
- Upon reviewing this Disciplinary Report, I conclude that the offense would be properly responded to by Disciplinary Hearing

Truitt, George C (Shift Commander - Large Inst.)

I have received a copy of this notice on DATE: _____ TIME: _____ and have been informed of my rights to have a hearing and to present evidence on my own behalf. I understand, if found guilty, I will be subject to imposition of sanctions outlined in the Rules of conduct.

Preliminary Hearing
Officer:

Offender:

Collins, Curtis M

* * * * *
UNITED STATES DISTRICT COURT

* TABLE OF CONTENTS *

TABLE OF AUTHORITIES	PAGE #
	3#
NATURE AND STAGE OF PROCEEDINGS	PAGE #
	4#
SUMMARY OF THE FACTS	PAGE #
	5#
STATEMENT OF FACTS	PAGE #
	6
ARGUMENTS	PAGE #
	7
CONCLUSION	PAGE #
	8#

OPENING
BRIEF

IN * DEPARTMENT * COURT * OF * DELAWARE
TABLE OF AUTHORITIES

CASES

BRACEY v. GRONOBIE 494-F-2D-566-

Byrd v. BRISHKE 466-F-2D-6

COTTER v. BROWN 268-F-SUPP-198

CURRIS v. BECKER 489-F-2D-516

DAVIDSON v. DEXON 386 F. SUPP 482

DOLE v. ARCO CHEMICAL CO. 921-F-2D-484

HUDSON 112 S. CT - 995

KOMPCET v. RENOIL METAL CO. 372-F-2D-245

HANDMAN v. ROYSTER 354-F. SUPP-1302

MONROE v. POPE 81-S, CT - 473

NUSSLE v. PORTER 122-S, CT - 983

Popow v. MARGNET 476-F. SUPP-1237

WRFSHT v. McMANN 460 F. 2D - 126

Constitutional PROVISION

EIGHT Amendment

FOURTEENTH AMENDMENT

* NATURE STAGE OF PROCEEDINGS *

On 8-6-2005 Plaintiff Curtis M. Collins entered the main chow hall at Breakfast time while at the Sussex Correctional Center located in Georgetown, De. He asked other inmates already seated at the table to slide down so he could sit down to eat, at which time % Berezansky told Mr. Collins to "shut the fuck up" and "Throw your fucking food tray away" Mr. Collins asked % Berezansky why he had to throw away his food tray. % Berezansky responded There no talking in the chow Hall, Mr. Collins was not having a conversation with another inmate, he was simply trying to get a place vacated so he could eat his food. Mr. Collins the use the chain of command rank in which he ask Sgt. Chandler why he couldn't finish his food. Sgt. Chandler didn't respond. Mr. Collins dumped his food tray. As Mr. Collins was leaving the chow hall % Berezansky made a comment directed to Mr. Collins. Then Mr. Collins turned around in attempt to hear what % Berezansky said, % Berezansky punched Mr. Collins in his face. Then hand cuff and pepper spray. Mr. Collins before the rest of the % staff of % Milligan, Daisey, Irvine Johnson maliciously assault Mr. Collins. When a member from SCI medical staff ~~REFUSED~~ to look at Mr. Collins injuries. She told Mr. Collins to "stop crying like a little bitch." Mr. Collins went 47 days without receiving proper medical treatment. since then x-rays were taken of Mr. Collins ribs that displayed his ribs was fractured Mr. Collins was refuse copies of

* NATURE * STAGES * PAGE 2
OF PROCEEDINGS

his medical report by the doctor at
Sussex Correction Center in Georgetown, De

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CIVIL NO 105-739-S.L.R.

STATEMENT OF THE FACTS

Delaware Department of Corrections has a dietitian, who puts together a menu in which an inmate will receive all proper required nutritions.

Department of Corrections, Commissioner, Stanley Taylor and Sussex Correctional Institution, Warden, Rick Kearney support their correctional officer to violate Inmates Fourteenth Amendment right to due process under civil right act by permitting the correctional office to order Inmates to dump their food tray and not providing the required food nutrient design by the dietitians.

Excessive use of force, assault and battery, and verbal abuse violated Mr. Collins constitutionally protected rights in accordance with the Eighth Amendment of United States constitution, By physically Beaten Mr. Collins. The actions by the Correctional officers also violated the Fourteenth Amendment of United States constitution, Equal Protection right.

When the medical staff failed to provide adequate medical attention it also violated Mr. Collins Eighth Amendment of United State constitution excessive cruel unusual punishment.

* THE
* STATE OF
* DELAWARE
ARGUMENT *

Delaware, Department of Correction, Commissioner, Stanley Taylor and Sussex Correctional Institution, Warden, Rick Kearney failure to control correctional officer with their knowledge of the correctional officers repetitive use of excessive force constitute a de facto policy Popow v Margate 476 F. Supp 1237.

Delaware Department of Corrections has a history for using excessive force violating the eighth and fourteenth Amendment of United States Constitution Davidson v Dixon 386 F. Supp 482

All prisoner is entitle to be in an environment that's free from cruel and unusual punishment under the eighth and Fourteenth Amendment Nussle vs. Porter 122 S.Ct 983.

This case should be ruled more by the merits then technicalities. The Department of Correction Central all Paper work. Commissioner, Stanley Taylor went under a major review for the neglect of Department of Correct medical Staff. In that same error Mr. Collins was denied medical treatment also denied right to x-ray in his personal medical file. Dole v Arce.

Chemical Co. 921 F.2d 484

The Correctional Officers was maliciously and sadistically when they hand cuff, sprayed

ARGUMENT CONT'D

two cans of pepper spray in Mr. Collins face. Then continue to beat Mr. Collins Hudson 112 S.Ct 995 When a prisoner is under control where the Correctional officers can't be harmed. Then continue to physically hurt Mr. Collins that act violate Prisoner Fourteenth Amendment right to due process under civil right act Davidson v Dixon 386 F. Supp. 482.

Although it may appear that some Correctional officer didn't physically beat Mr. Collins personally they to share equal amount of responsibility Because of their knowledge of event that took place Even the medical staff that refuse Mr. Collins Proper treatment is equally responsible for Mr. Collins pain and suffering. Bracey v Grenoble 494 F.2d 566, Byrd v Brishke 466 F.2d 6, Landman v Royster 354 F. Supp 1302, Wright v McMann 460 F.2d 126

State Prisoners are entitle to recover for Physical abuse of his body under civil right act Curtis v Everett 489 F.2d 516 In this kind of premeditate malicious assault punitive damages are appropriate Collins v Brown 268 F. Supp 198

Lampert v Renold Metal Co. 372 F.2d 245 Correctional officer are not eligible for sovereign immunity When they act unconstitutionally Monroe v Pope 81 S.Ct 473

DISTRICT COURT

*
CONCLUSION
MOREOVER THE PLAINTIFF
BELIEVES THAT SUFFICIENT
EVIDENCE EXIST FOR THIS HONORABLE
Court to grant Reliefs he REQUESTED.

RESPECTFULLY
Curtis Collins
DELAWARE CORRECTIONAL CENTER
#1181 # PADDICK RD Smyrna Delaware
19947

CERTIFICATE OF SERVICE

I, CURTIS M. COLLINS,

hereby certify that

on 11 30-06 I caused a true and correct copy of the
BRIEF ATTACHED was handed to a DEE, CORR, OFFICER TO PLACE
IN A DEE, U.S. MAILING SYSTEM TO FORWARD TO:

DEFENDANT'S COUNSEL
ERIKA Y. TROSS

DEPUTY ATTORNEY GENERAL
D.E.P.T. OF JUSTICE

CARVEI STATE BLDG
820 N FRENCH ST WILM/DEI
19801

CLERK

PETER M. DALHO

UNITED STATES DISTRICT COURT
OF DEI, Lock box 18#
844 N King St
Wilm/DEI,
19801-3570 #

RESPECTFULLY SUBMITTED

CURTIS M. COLLINS
DEE, CORR, CENTER
1181 PADDOCK RD
SMYRNA DEI

"IN" DistrACT "COOK"

PAGE
11

PLAINTIFF WITNESSES

Bobby PEACE m s b kitchen WORKER

WILLIAM DEVONSHIRE s b # 193813

John PALMER s b # 194390

CORRECTIONS ALSO HAVE PLENTY MORE WITNESSES

that were "PRESENT" on 8-6-05 m s b chow hall

EXHIBITS

* IN THE "UNITED STATES" DISTRICT COURT *
FOR THE DISTRICT OF DELAWARE *

CURTIS M. COLLINS

CAVET NO. 105-739-SLR.

V.B.

WARDEN RACK KEEHNEY ET AL,
CURTIS M. COLLINS



* * *
PLAINTIFF APPENDIX

ONCE

CARL C. DANBORG"
ATTORNEY GENERAL
OF DELAWARE DEPT OF JUSTICE
COURT STATE BLDG 820
W. FRENCH ST WILM, DE 19801

1980;

* * *
RESPECTFULLY
CURTIS M. COLLINS

DELAWARE CORRECTIONAL CENTER

1181, PADDICK ROAD SMYRNA DEL. 19917

DATR

"WANTED" STATES "DISTRICT" COURT
FOR THE DISTRICT OF DELAWARE



CIVIL NO. 105-735-SLR-

* TABLE OF CONTENTS *

U.S DISTRICT COURT "FILING AND JUDGMENTS" ORDER OTHER DOCUMENTS

DISCRIMINATORY REPORTS "INCIDENT REPORTS PAGE 1 TO 1

CONSULTATION REQUESTS PAGE 5

TWO "FRACTURE" RIBS PAGE #6

PHYSICIANS ORDER ON 9-22-05 TO TELL THE PLAINTIFF THAT HE HAD BROKEN RIBS PAGE 7

MARY THERP-BIEDER, R.T. ON X-RAYS RIBS PAGE #8

RIB BREAK ORDER PAGE #9

FOOD MENU THE PRISON DIETITIANER REGULAR MEALS NEW PAPERS FOR

PLAINTIFF WITNESSES PAGE 11#

GEORGETOWN DE, 19947

Phone No. 302-856-5280

PAGE 31

DISCIPLINARY REPORT

Disciplinary Type: Class 1

Housing Unit: MULTI-SECURITY

IR# 11018

SBI#	Inmate Name	Inst. Name	Location Of Incident	Date	Time
00314128	Collins, Curtis M	SCI	MULTI-SECURITY	08/06/2005	06:00

Violations: 1.06/200.203 Disorderly or Threatening Behavior

Witnesses: 1. N/A

2. N/A

3. N/A

Description of Alleged Violation(s)

On The Above Date And Time, I/M Collins, Curtis 00314128 Was Ordered To Lock In For Violating Chow Hall Rules And Regulation I/M Collins Was Ordered Twice To Dump His Tray. After Dumping The Tray, I/M Collins Yelled Curses At Myself (C/O Berezansk) And Walked Towards Me With Clinched Fists And Teeth As To Want To Fight Me. I Captured Him, Took Him To The Ground And Cuffed Him And Took Him To Be Seen My Medical. Eor

Reporting Officer: Berezansky, Bradley (Correctional Officer)

Immediate Action Taken

Immediate action taken by: Berezansky, Bradley -Correctional Officer

Ordered I/M Collins To Dump His Tray.

Offender Disposition Details

Disposition: N/A

Date: N/A

Time: N/A

Cell secured? No

Reason: N/A

Disposition Of Evidence: N/A

Received, Reviewed & Approved

Approval Information

Approved: Disapproved: Approved By: Johnson, Joseph H (Staff Lt./Lt)

AUG 06 2005

Comments: Sent To Lt. J Isaacs

Watch Commander

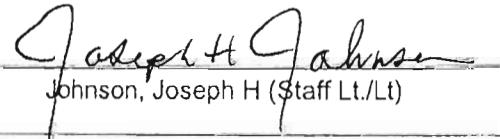
Shift Supervisor Details

Date Received: 8/6/05 Time: 0700 Received From: _____

Shift Supervisor Determination:

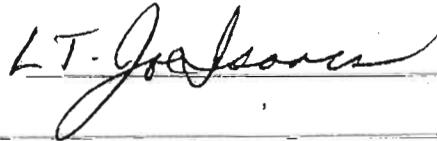
[] Upon reviewing this Disciplinary Report, I conclude that the offense may be properly responded to by an immediate revocation of the following privileges(see reverse side) for _____ hours not to exceed 24 hours)

Upon reviewing this Disciplinary Report, I conclude that the offense would be properly responded to by Disciplinary Hearing



Johnson, Joseph H (Staff Lt./Lt)

I have received a copy of this notice on DATE: 8-9-05 TIME: 0255 and have been informed of my rights to have a hearing and to present evidence on my own behalf. I understand, if found guilty, I will be subject to imposition of sanctions outlined in the Rules of conduct.

Preliminary Hearing
Officer:

Offender: 
Collins, Curtis M

Incident#
11020

SCI Sussex Correctional Institution

PO Box 500

GEORGETOWN DE, 19947

Phone#: 302-856-5280

P 2

INCIDENT REPORT

Group: N/A	Type: Inmate Involved	Incident Date: 08/06/2005	Time: 06:00	Confidential: No
------------	-----------------------	---------------------------	-------------	------------------

Facility: SCI Sussex Correctional InstitutionFollowup Required :NoIncident Location: MULTI-SECURITYLocation Description: MSB Chow HallViolated Conditions: 1.06/200.203 Disorderly or Threatening Behavior**Description of Incident:**

On the above date, time, and location, I C/O S. Emerick observed C/O Berezansky give I/M Collins, Curtis 00314128 a direct order to stop talking or dump his tray. I/M Collins dumped his tray and then became disorderly, and walked towards C/O Berezansky in a threatening manner with his fists clinched. I/M Collins then lunged at C/O Berezansky as he was exiting the chow hall. C/O Berezansky then pulled and sprayed Capstun directly in I/M Collins' face. I/M Collins was then taken to the ground by myself, C/O Berezansky, and C/O Daisey to be handcuffed. I/M Collins was then escorted to the holding cell, seen by medical where he complained of no injuries. After being cleared by medical, I/M Collins was placed in ASDA 1 Cell 1.

Injured Persons	Hospitalized	Nature Of Injuries
N/A	N/A	N/A

Evidence Type: N/ADate Collected: N/ADiscovered By :N/ASecured By:N/AType of Force Used: PHYSICAL CHEMICAL STUN OTHER CAPSTUN NONERestraints Used : N/A

Immediate Action Taken:

N/A

Individuals Involved			
Employee Code	Name	SBI#	Title
Inmate	Curtis, Collins M	00314128	N/A
Staff	Shawn, Emerick T	N/A	Correctional Officer
Staff	Bradley, Berezansky	N/A	Correctional Officer
Staff	Jeffrey, Daisey	N/A	CO Corporal/Sgt. Small Inst.

Reporting Officer: Emerick, Shawn T (Co Corporal/Sgt. SmallEntered By: Daisey, Jeffrey (Co Corporal/Sgt. Small Inst.)**Approval Information**
 Approved Disapproved Date: 08/06/2005 Approved by: Johnson, Joseph H (Staff Lt./Lt)

Comments: Sent to Lt. J Isaacs

Received, Reviewed &
Approved
AUG 6 2005
Vice Commander
Signature: JH

D00180

Incident#
11019

SCI Sussex Correctional Institution

PO Box 500

GEORGETOWN DE, 19947

Phone#: 302-856-5280

Page 3

INCIDENT REPORT

Facility: SCI Sussex Correctional Institution Incident Date: 08/06/2005 Time: 06:00 Confidential No:

Facility: SCI Sussex Correctional InstitutionFollowup Required :NoIncident Location: MULTI-SECURITYLocation Description: CHOW HALLViolated Conditions: 1.06/200.203 Disorderly or Threatening Behavior**Description of Incident:**

ON THE ABOVE DATE AND APPRX. TIME, I C/O DAISEY WAS ASSISTING WITH CHOW WHEN I HEARD C/O BEREZANSKY GIVE I/M CURTIS COLLINS A DIRECT ORDER TO STOP TALKING OR DUMP HIS TRAY. AT THAT TIME I/M COLLINS BECOME EVEN LOUDER AND CAUSING A COMMOTION. THEN C/O BEREZANSKY ORDERED I/M COLLINS TO DUMP HIS TRAY AND RETURN TO CELL AND LOCK IN. AS I/M COLLINS WAS EXITING THE CHOW HALL ,I/M COLLINS TURNED AROUND IN A THREATENING MANNER AND RAISED HIS FIST IN A FIGHTING STANCE AND WAS LUNGING TOWARD C/O BEREZANSKY. C/O. BEREZANSKY AT THAT TIME PULLED CAPSTUN AND SPRAYED I/M CURTIS COLLINS. AT THAT TIME I/M COLLINS WAS TAKEN TO THR GROUND BY I C/O DAISEY ,C/O EMERICK AND C/O BEREZANSKY AND HANDCUFFED AND TAKEN TO HOLDING CELL AND WAS SEEN BY MEDICAL WITH NO INJURIES AND PLACED IN ASDA-1,CELL-1. E.O.R

Injured Persons	Hospitalized	Nature Of Injuries
N/A	N/A	N/A

Evidence Type: N/ADate Collected: N/ADiscovered By: N/ASecured By: N/AType of Force Used: PHYSICAL CHEMICAL STUN OTHER CAPSTUN NONERestraints Used : HANDCUFFS**Immediate Action Taken:**

I/M COLLINS BECOME THREATENING AND DISORDERY WAS SPRAYED WITH CAPSTUN,HANDCUFFED AND WAS SEEN BY MEDICAL.PLACED IN HOLDING CELL

Individuals Involved				
Person Code	Name	SBI#	Title	
Staff	Jeffrey, Daisey	N/A	CO Corporal/Sgt. Small Inst.	
Staff	Bradley, Berezansky	N/A	Correctional Officer	
Staff	Shawn, Emerick T	N/A	Correctional Officer	
Inmate	Curtis, Collins M	00314128	N/A	

Reporting Officer: Daisey, Jeffrey (Co Corporal/Sgt. Small Inst.) Entered By: Daisey, Jeffrey (Co Corporal/Sgt. Small Inst.)**Approval Information**

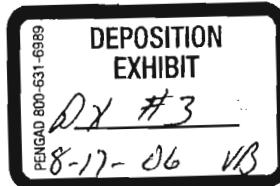
Approved Disapproved Date: 08/06/2005 Approved by: Johnson, Joseph H (Staff Lt./Lt)

Comments: Sent to Lt. J Isaacs

Received, Reviewed &
Approved

AUG 06 2005

Watch Commander

Signature JHG

Date: 8/6/05 Day: SAT.

Day: SAT

IIFT ASSIGNMENT ROSTER-1

Shin: 12k8

Watch Commander

West

CONFIDENTIAL

D00181

Answers to Complaints1:05-cv-00739-SLR Collins v. Kearney et al**U.S. District Court****District of Delaware**

Notice of Electronic Filing

The following transaction was received from Tross, Erika Yvonne entered on 10/31/2006 at 2:04 PM EST and filed on 10/31/2006

Case Name: Collins v. Kearney et al**Case Number:** 1:05-cv-739

Filer: Rick Kearney
 Berezansky
 James Chandler
 Milligan
 Daisey
 Irvin Johnson

Document Number: 62**Docket Text:**

ANSWER to Complaint with Jury Demand by Rick Kearney, James Chandler, Berezansky, Milligan, Daisey, Irvin Johnson.(Tross, Erika)

The following document(s) are associated with this transaction:

Document description: Main Document**Original filename:** n/a**Electronic document Stamp:**

[STAMP_dcecfStamp_ID=1079733196 [Date=10/31/2006] [FileNumber=295632-0] [70af27142678dd81447a8502f3f8f4235f538152726f78022312fdb1dad5add054f 73b21b3d653bfe42f400ed5acd80507ebd1f988a505f4bdae464460588933]]

1:05-cv-739 Notice will be electronically mailed to:

Erika Yvonne Tross Erika.Tross@state.de.us

1:05-cv-739 Notice will be delivered by other means to:

Curtis M. Collins
 SBI #314128
 Delaware Correctional Center
 SHU 17-DL-2
 1181 Paddock Road
 Smyrna, DE 19977

Other Documents

[1:05-cv-00739-SLR Collins v. Kearney et al](#)

PaperDocuments

U.S. District Court

District of Delaware

Notice of Electronic Filing

The following transaction was entered on 11/9/2006 at 5:07 PM EST and filed on 11/9/2006

Case Name: Collins v. Kearney et al

Case Number: [1:05-cv-739](#)

Filer:

Document Number: [66](#)

Docket Text:

CERTIFICATION by Nancy Rebeschini, Esq. re deposition of James Chandler held on November 2, 2006. (fmt)

1:05-cv-739 Notice has been electronically mailed to:

Erika Yvonne Tross Erika.Tross@state.de.us

1:05-cv-739 Notice has been delivered by other means to:

Curtis M. Collins
SBI #314128
Delaware Correctional Center
SHU 17-DL-2
1181 Paddock Road
Smyrna, DE 19977

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP_dcecfStamp_ID=1079733196 [Date=11/9/2006] [FileNumber=300757-0]
[90911be9d5322bdc1b1eedb51ca65bc80b993d58d44b425ae09d2eb7eb93c9a680d7
af63d0ec4bf6986ab1aa3f12246e6da2896e5e0b32d3980bdc35833cf147]]